

(BILLING CODE: 4810-02-P)

DEPARTMENT OF THE TREASURY

31 CFR Part 103

**Notice of Expiration of Conditional Exception to Bank Secrecy Act Regulations
Relating to Orders for Transmittal of Funds by Financial Institutions**

AGENCY: Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Expiration of conditional exception; request for comments.

SUMMARY: FinCEN is giving notice of the expiration of a conditional exception to a Bank Secrecy Act requirement on May 31, 2003. The exception permits financial institutions to substitute coded information for the true name and address of a customer in a funds transmittal order.

DATES: Effective June 1, 2003. Written comments must be received on or before [INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Commenters are encouraged to submit comments by electronic mail because paper mail in the Washington, D.C. area may be delayed. Comments submitted by electronic mail may be sent to regcomments@fincen.treas.gov with the caption in the body of the text, “ATTN: Conditional Exception Expiration.” Comments also may be submitted by paper mail to FinCEN, P.O. Box 39, Vienna, VA 22183-0039, “ATTN: Conditional Exception Expiration.” Comments should be sent by one method only. Comments may be inspected at FinCEN between 10 a.m. and 4 p.m., in the FinCEN Reading Room in Washington, D.C. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354-6400 (not a toll-free number).

FOR FURTHER INFORMATION CONTACT: David Vogt, Executive Associate Director, Office of Regulatory Programs, FinCEN, (202) 354-6400, or Judith R. Starr, Chief Counsel, FinCEN, (703) 905-3590.

SUPPLEMENTARY INFORMATION:

I. Background

In 1998, FinCEN granted a conditional exception (“the CIF Exception”) to the strict operation of 31 CFR 103.33(g) (the “Travel Rule”). See FinCEN Issuance 98-1, 63 FR 3640 (January 26, 1998). The Travel Rule requires a financial institution to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more. The CIF Exception addressed computer programming problems in the banking and securities industries by relaxing the Travel Rule’s requirement that a customer’s true name and address be included in a funds transmittal order, so long as alternate steps, described in FinCEN Issuance 98-1 and designed to prevent avoidance of the Travel Rule, were satisfied. By its terms, the CIF Exception to the Travel Rule was to expire on May 31, 1999; however, in light of programming burdens associated with year 2000 compliance issues, FinCEN extended the CIF Exception so that it would expire on May 31, 2001. See FinCEN Issuance 99-1, 64 FR 41041 (July 29, 1999). On May 30, 2001, after first soliciting input from the law enforcement community for its views on any law enforcement burdens caused by the CIF Exception, FinCEN again extended the CIF Exception. The CIF Exception is now scheduled to expire on May 31, 2003. See FinCEN Issuance 2001-1, 66 FR 32746 (June 18, 2001). FinCEN intends to permit the CIF Exception to expire, and is soliciting comments before it does so.

II. The CIF Exception

FinCEN promulgated the Travel Rule in 1995. The Travel Rule requires financial institutions to include certain information in transmittal orders relating to transmittals of funds of \$3,000 or more, which must “travel” with the order throughout the funds transmittal sequence. Among these requirements is that each transmittor’s financial institution and intermediary financial institution include in a transmittal order the transmittor’s true name and street address. See 31 CFR 103.33(g)(1)(i)-(ii) and (g)(2)(i)-(ii). Subsequently, financial institutions represented to FinCEN that their ability to comply with the Travel Rule at all depended on their ability to use their automated customer information files, known as CIFs. Although an originating institution always knew the originating customer’s true name and address, the CIFs were often programmed with coded or nominee names and addresses (or post office boxes). The reprogramming tasks involved in changing the CIFs were represented to be a significant barrier to compliance with the Travel Rule. In light of these burdens, and in the interest of obtaining prompt compliance, FinCEN promulgated the conditional exception.

The conditional exception provides that a financial institution may satisfy the requirements of 31 CFR 103.33(g) that a customer’s true name and address be included in a transmittal order, only upon satisfaction of the following conditions:

- (1) The CIFs are not specifically altered for the particular transmittal of funds in question;
- (2) The CIFs are generally programmed and used by the institution for customer communications, not simply for transmittal of funds transactions, and as so programmed generate other than true name and street address information;

- (3) The institution itself knows and can associate the CIF information used in the funds transmittal order with the true name and street address of the transmittor of the order;
- (4) The transmittal order includes a question mark symbol immediately following any designation of the transmittor other than by a true name on the order;
- (5) Any currency transaction report or suspicious activity report by the institution with respect to the funds transmittal contains the true name and address information for the transmittor and plainly associates the report with the particular funds transmittal in question.

The conditional exception further provides that it has no application to any funds transmittals for whose processing an institution does not automatically rely on preprogrammed and prespecified CIF name and address information. FinCEN's release promulgating the CIF Exception further warned financial institutions that any customer request for a nominee name in a CIF should be carefully evaluated as a potentially suspicious transaction. See 63 FR 3642.

III. Expiration of the CIF Exception

In the aftermath of the terrorist attacks of September 11 and the passage of the Uniting and Strengthening America by Providing Appropriate Tools to Intercept and Obstruct Terrorism Act of 2001 ("USA Patriot Act"), Congress has emphasized the need to increase transparency across the financial sector. See P.L. 107-56, Section 302(a)(2) (finding that defects in financial transparency are critical to the financing of global terrorism). FinCEN has implemented this congressional policy in its numerous Patriot Act rulemakings and believes that it should be reflected in existing BSA rules such as the

Travel Rule as well. The financial community has had a number of years to address the technological issues posed by the Travel Rule, and the major programming issues posed by year 2000 compliance are now well behind it. Therefore, FinCEN deems it appropriate, after two extensions, to permit the CIF Exception to expire. This conclusion is buttressed by information FinCEN has received regarding the potential for abuse of the CIF Exception; for example, by private banking departments that cater to high net worth individuals' demands for increased confidentiality by using CIFs.

IV. Request for Comments

FinCEN invites comments on (1) the existence of any remaining technological barriers to full compliance with the Travel Rule; (2) whether financial institutions will be able to comply fully with the Travel Rule upon the expiration of the CIF Exception or whether additional time will be required to attain compliance; (3) the existence of any adverse effect on law enforcement investigations arising from the CIF Exception; and (4) the potential for or actual abuse of the CIF Exception.

Dated: _____

James F. Sloan
Director,
Financial Crimes Enforcement Network